

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

SHIPLEY CAPITAL CORP.,	)	
	)	
Plaintiff,	)	C.A. No. 05-09-050
	)	
vs.	)	
	)	
ALBERT W. TYLER,	)	
	)	
Defendant.	)	
	)	

Submitted July 31, 2009  
Decided August 14, 2009

Adam R. Elgart, Esquire, Esquire, Attorney for Plaintiff  
Albert W. Tyler, *pro se*, Defendant

**DECISION ON APPEAL FROM COMMISSIONER'S  
RECOMMENDATION**

Defendant appeals the Commissioner's recommendation that default judgment be entered against Defendant for failure to appear at a scheduled Pre-Trial Conference on April 9, 2009.

The entry of a default judgment is a case-dispositive determination. When reviewing case-dispositive matters the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. CCP Civ. R. 112 (A) (4) (iv).

The Court has reviewed *de novo* the record in this matter and the transcript of the Pre-Trial Conference. It does appear from the record that

the Defendant attempted to make arrangements to participate in the conference telephonically by writing to the Court on March 31, 2009 and requesting permission to do so. He failed to provide his telephone number in the letter, and also failed to serve the request on opposing counsel. The Court did not notify Defendant of a decision on his request prior to the conference date.

Public policy and this Court's rules favor disposition of suits upon their merits, rather than through procedural defaults.<sup>1</sup> I find that the record demonstrates a good-faith, although flawed, attempt by Defendant to participate in the Pre-Trial Conference. The entry of default judgment for his failure to appear under these circumstances is inappropriate. The Court therefore rejects the Commissioner's recommendation. The Clerk shall schedule another Pre-Trial Conference, and Defendant may appear at that conference telephonically; provided he provides the Clerk with a telephone number through which he will participate at least seven (7) days prior to the conference. Defendant must appear personally in Court for trial in this matter when scheduled.

**IT IS SO ORDERED**, this \_\_\_\_ day of August, 2009.

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Kenneth S. Clark, Jr.  
Judge

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<sup>1</sup> See *Old Guard Ins. Co. v. Jimmy's Grille, Inc.*, 2004 WL 2154286 (Del. Sept. 21, 2004); *Beneficial Nat. Bank v. Eber*, 1988 WL 1017752, 1 (Del. Com. Pl.) (citing *Vechery v. McCabe*, 100 A.2d 460, 461 (Del. Super. 1953)); CCP Civ. R. 60 (b) (1).

